

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

**MEMORANDUM OF LAW & ORDER**  
Criminal File No. 16-330 (MJD/HB)

(1) JULIUS MALIK HEARD,

Defendant.

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Jeffry Paulsen, Assistant United States Attorney, Counsel for Plaintiff.

Julius Malik Heard, pro se.

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This matter is before the Court on Defendant Julius Malik Heard's Pro Se Motion to Vacate Conviction. [Docket No. 40]

On February 16, 2017, Defendant Julius Malik Heard pled guilty to Count One of the Indictment, Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The Court sentenced Defendant to the Bureau of Prisons for a term of 71 months. Defendant appealed his sentence to the Eighth Circuit Court of Appeals. On June 28, 2018, the Eighth Circuit affirmed. [Docket No. 36] The mandate issued on July 19, 2018. [Docket No. 38]

On August 8, 2019, Defendant filed a motion requesting that his conviction be vacated based on the United States Supreme Court's decision in Rehaif v. United States, 139 S. Ct. 2191 (2019). [Docket No. 40] The Government has filed its opposition to Defendant's motion.

Defendant's motion is not captioned as a § 2255 motion; however, the correct procedure for Defendant to challenge the validity of his conviction would be to bring a motion under 28 U.S.C. § 2255. Under Castro v. United States, the Court may not recharacterize a pro se litigant's motion as a request for relief under § 2255 unless the Court first warns the pro se litigant about the consequences of the recharacterization. 540 U.S. 375, 382 (2003).

If this motion is recharacterized as a § 2255 motion, any subsequent § 2255 motion Defendant might file will be subject to the restrictions placed on "second or successive" motions. See 28 U.S.C. § 2255(h). Prisoners are greatly restricted from filing "second or successive" motions under § 2255 challenging the same conviction or sentence. Id. If Defendant wishes to proceed with a § 2255 motion, he should include every claim that he believes is available to him, so that those claims will not later be barred by § 2255(h). Should Defendant not wish to proceed with the § 2255 motion at this time, he may voluntarily dismiss this

motion; that said, Defendant is warned that claims under § 2255 are governed by a one-year limitations period, see 28 U.S.C. § 2255(f), and that delay in prosecuting his claims could result in those claims becoming time-barred.

Accordingly, based upon the files, records, and proceedings herein, **IT IS  
HEREBY ORDERED:**

Defendant has 30 days from the date of this Order to submit an amended § 2255 motion or withdraw his current motion. Absent withdrawal or modification, the Court will recharacterize Defendant's current motion as a motion under 28 U.S.C. § 2255 seeking to vacate, set aside or correct his sentence and will rule on that motion.

Dated: December 11, 2019

s/ Michael J. Davis

Michael J. Davis  
United States District Court